THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.3851 OF 2006

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Dated: 06-03-2006

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Between

S.M. Hussain Rashed,

S/o Late S.T. Hussain,

Occ: Business, R/o. 219,

Gymkhana Road,

Secunderabad.

...PETITIONER

AND

The Commissioner,

Municipal Corporation of

Hyderabad, Hyderabad

and another.

...RESPONDENTS

ORDER:

The petitioner seeks to issue a writ of mandamus to declare the notice dated 25-02-2006 in letter No.2562/TPS/C6/ MCH/2005 issued under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') by the respondents as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioner submits that Smt. Farida Bhanu and others are the owners of the land with building bearing Municipal Nos.4-1-873 to 877 situated at Tilak Road, Hyderabad,

obtained sanction of shopping cum office complex in 1977 vide permit No.48/6 dated 11.11.1977 and a revised sanction with modification was obtained vide permit No.113/18 dated 14.11.1980 and subsequent to the completion of construction many portions were sold to various purchasers. While so, the respondents without any show cause notice have issued a notice in letter No.2562/TPS/C6/MCH/2005, dated 25-02-2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioner has made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in the order in suo-motto contempt case in C.C.No.101 of 1996, dated 28-2-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioner was directed to remove the said unauthorized structure within 24 hours.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act, but in the instant case, the sanction plan goes to show that permission has been granted for the Sub-Cellar, Basement floor, Ground-floor and upper-2-floors. If that is the case, it is for the respondents to point out whether the petitioner has converted the parking place into shops.

If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the construction has been made without any permission, has been issued directing the petitioner to remove the structures.

Having regard to the facts and circumstances of the case,

the impugned notice is directed to be treated as a show cause notice only permitting the petitioner to file an explanation/representation within one week from the date of receipt of a copy of this order and

till the said representation is considered and appropriate orders are passed, the respondents shall not remove or demolish the shops or premises of the petitioner.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

March 6, 2006

Note: Furnish C.C. of the order by 08.03.2006

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DSK